

HOUSE BILL 3246

By Hood

AN ACT amend Tennessee Code Annotated, relative to enacting the "Tennessee Taxpayer and Citizen Protection Act of 2008".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Taxpayer and Citizen Protection Act of 2008".

SECTION 2. The general assembly finds that illegal immigration is causing economic hardship and lawlessness in this state and that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. The general assembly further finds that when illegal immigrants have been harbored and sheltered in this state and encouraged to reside in this state through the issuance of identification cards that are issued without verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Tennessee. Therefore, the people of the state of Tennessee declare that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The state of Tennessee also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

SECTION 3.

(a) The following entities may create, publish or otherwise manufacture an identification document, identification card, or identification certificate and may possess an engraved plate or other such device for the printing of such identification; provided, the name of the issuing entity shall be clearly printed upon the face of the identification:

(1) Businesses, companies, corporations, service organizations and federal, state and local governmental agencies for employee identification which is designed to identify the bearer as an employee;

(2) Businesses, companies, corporations and service organizations for customer identification which is designed to identify the bearer as a customer or member;

(3) Federal, state and local government agencies for purposes authorized or required by law or any legitimate purpose consistent with the duties of such an agency, including, but not limited to, voter identification cards, driver licenses, nondriver identification cards, passports, birth certificates and social security cards;

(4) Any public school or state or private educational institution, to identify the bearer as an administrator, faculty member, student or employee;

(5) Any professional organization or labor union to identify the bearer as a member of the professional organization or labor union; and

(6) Businesses, companies or corporations which manufacture medical-alert identification for the wearer thereof.

(b) All identification documents as provided for in subdivision (3) or (4) of subsection (a) of this section shall be issued only to United States citizens, nationals and legal permanent resident aliens.

(c) The provisions of subsection (b) of this section shall not apply when an applicant presents, in person, valid documentary evidence of:

(1) A valid, unexpired immigrant or nonimmigrant visa status for admission into the United States;

(2) A pending or approved application for asylum in the United States;

- (3) Admission into the United States in refugee status;
- (4) A pending or approved application for temporary protected status in the United States;
- (5) Approved deferred action status; or
- (6) A pending application for adjustment of status to legal permanent residence status or conditional resident status.

Upon approval, the applicant may be issued an identification document provided for in subdivision (3) or (4) of subsection (a) of this section. Such identification document shall be valid only during the period of time of the authorized stay of the applicant in the United States or, if there is no definite end to the period of authorized stay, a period of one (1) year. Any identification document issued pursuant to the provisions of this subsection shall clearly indicate that it is temporary and shall state the date that the identification document expires. Such identification document may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the identification document has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

(d) The provisions of subsection (b) of this section shall not apply to an identification document described in subdivision (4) of subsection (a) of this section that is only valid for use on the campus or facility of that educational institution and includes a statement of such restricted validity clearly and conspicuously printed upon the face of the identification document.

(e) Any driver license issued to a person who is not a United States citizen, national or legal permanent resident alien for which an application has been made for renewal, duplication or reissuance shall be presumed to have been issued in

accordance with the provisions of subsection (c) of this section; provided that, at the time the application is made, the driver license has not expired, or been cancelled, suspended or revoked. The requirements of subsection (c) of this section shall apply, however, to a renewal, duplication or reissuance if the department of safety is notified by a local, state or federal government agency of information in the possession of the agency indicating a reasonable suspicion that the individual seeking such renewal, duplication or reissuance is present in the United States in violation of law. The provisions of this subsection shall not apply to United States citizens, nationals or legal permanent resident aliens.

SECTION 4.

(a) When a person charged with a felony or with driving under the influence pursuant to § 55-10-401 is confined, for any period, in the jail of the county or any municipality, a reasonable effort shall be made to determine the citizenship status of the person so confined.

(b) If the prisoner is a foreign national, the keeper of the jail or other officer shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and, if lawfully admitted, that such lawful status has not expired. If verification of lawful status cannot be made from documents in the possession of the prisoner, verification shall be made within forty-eight (48) hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the lawful immigration status of the prisoner cannot be verified, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(c) For the purpose of determining the grant of or issuance of bond, it shall be a rebuttable presumption that a person whose citizenship status has been verified pursuant to subsection (b) of this section to be a foreign national who has not been lawfully admitted to the United States is at risk of flight.

SECTION 5.

As used in Sections 6 and 7 of this act:

(1) "Status Verification System" means an electronic system operated by the federal government, through which an authorized official of an agency of the state of Tennessee or of a political subdivision therein may make an inquiry, by exercise of authority delegated pursuant to Section 1373 of Title 8 of the United States Code, to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by Section 7 of this act. The Status Verification System shall be deemed to include:

(A) The electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); 8 U.S.C., Section 1324a, and operated by the United States Department of Homeland Security, known as the Basic Pilot Program,

(B) Any equivalent federal program designated by the United States Department of Homeland Security or any other federal agency authorized to verify the work eligibility status of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603,

(C) Any other independent, third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in this paragraph, or

(D) The Social Security Number Verification Service, or such similar online verification process implemented by the United States Social Security Administration;

(2) "Public employer" means every department, agency, or instrumentality of the state or a political subdivision of the state;

(3) "Subcontractor" means a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier; and

(4) "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.

SECTION 6.

(a) Every public employer shall register with and utilize a Status Verification System as described in subdivisions (1)(A) or (1)(B) of Section 6 of this act to verify the federal employment authorization status of all new employees.

(b)

(1) After July 1, 2009, no public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of all new employees.

(2) After July 1, 2009, no contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the Status Verification System to verify information of all new employees.

(3) The provisions of this subsection shall not apply to any contracts entered into prior to the effective date of this section even though such contracts

may involve the physical performance of services within this state after July 1, 2009.

(c)

(1) It shall be a discriminatory practice for an employing entity to discharge an employee working in Tennessee who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2009, and who is working in Tennessee in a job category that requires equal skill, effort, and responsibility, and which is performed under similar working conditions, as defined by 29 U.S.C., Section 206(d)(1), as the job category held by the discharged employee.

(2) An employing entity which, on the date of the discharge in question, was currently enrolled in and used a Status Verification System to verify the employment eligibility of its employees in Tennessee hired after July 1, 2009, shall be exempt from liability, investigation, or suit arising from any action under this section.

(3) Any employee who is a United States citizen or permanent resident alien and whose discharge was a discriminatory practice as set out in subdivision (1) shall have a civil cause of action against the employing entity. No cause of action for a violation of this subsection shall arise anywhere in Tennessee law but from the provisions of this subsection. A civil cause of action under this section shall be filed in chancery court or circuit court within one (1) year after the alleged discriminatory practice. In such an action, the court may issue any permanent or temporary injunction, temporary restraining order, or any other order and may award to the plaintiff actual damages sustained by such plaintiff,

together with the costs of the lawsuit, including a reasonable fee for the plaintiff's attorney of record.

SECTION 7.

(a) Except as provided in subsection (c) of this section or where exempted by federal law, every agency or political subdivision of this state shall verify the lawful presence in the United States of any natural person fourteen (14) years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C., Section 1621, or for federal public benefits, as defined in 8 U.S.C., Section 1611, that is administered by an agency or a political subdivision of this state.

(b) The provisions of this section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(c) Verification of lawful presence under the provisions of this section shall not be required:

(1) For any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C., Section 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease; or

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United

States Attorney General, in the sole and unreviewable discretion of the United States Attorney General after consultation with appropriate federal agencies and departments which:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies,

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient, and

(C) Are necessary for the protection of life or safety.

(d) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall require that the applicant execute an affidavit under penalty of perjury that:

(1) He or she is a United States citizen; or

(2) He or she is a qualified alien under the federal Immigration and Nationality Act and is lawfully present in the United States.

The agency or political subdivision providing the state or local public benefits shall provide notary public services at no cost to the applicant.

(e) For any applicant who has executed the affidavit described in subdivision (d)(2) of this section, eligibility for benefits shall be verified through the Systematic Alien Verification for Entitlements (SAVE) Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this section.

(f) Any person who knowingly makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (d) of this section shall be

subject to criminal penalties applicable in this state for fraudulently obtaining public assistance program benefits. If the affidavit constitutes a false claim of U.S. citizenship under 18 U.S.C., Section 911, a complaint shall be filed by the agency requiring the affidavit with the United States Attorney General for the applicable district based upon the venue in which the affidavit was executed.

(g) Agencies or political subdivisions of this state may adopt variations to the requirements of the provisions of this section which demonstrably improve the efficiency or reduce delay in the verification process, or to provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of Tennessee.

(h) It shall be unlawful for any agency or political subdivision of this state to provide any state, local, or federal benefit, as defined in 8 U.S.C., Section 1621, or 8 U.S.C., Section 1611, in violation of the provisions of this section.

(i) Each state agency or department which administers any program of state or local public benefits shall provide an annual report to the Governor, the Speaker of the Senate and the Speaker of the House of Representatives with respect to its compliance with the provisions of this section. Each agency or department shall monitor the Systematic Alien Verification for Entitlements Program for application verification errors and significant delays and shall provide an annual public report on such errors and significant delays and recommendations to ensure that the application of the Systematic Alien Verification of Entitlements Program is not erroneously denying benefits to legal residents of Tennessee. Errors shall also be reported to the United States Department of Homeland Security by each agency or department.

SECTION 8.

(a) Any person exempt from payment of all or any portion of the tax imposed pursuant to chapter 4, parts 20 or 21 of title 67 or receiving a credit to be applied against the tax imposed pursuant to chapter 4, parts 20 or 21 of title 67 that knowingly employs an illegal immigrant in this state shall no longer be eligible for such exemption or receive such credit for the tax year in which the department discovers the employment relationship. For purposes of this section, "illegal immigrant" means a person who is not authorized by law to be present in the United States.

(b) The department of revenue is authorized to promulgate rules and regulations necessary to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 9. An individual who is not lawfully present in the United States shall not be eligible on the basis of residence within the state for:

(1) Any postsecondary education benefit, including, but not limited to, scholarships or financial aid; or

(2) Resident tuition.

SECTION 10. Subject to the availability of funding, the Tennessee bureau of investigation shall establish a Fraudulent Documents Identification (FDI) Unit for the primary purpose of investigating and apprehending persons or entities that participate in the sale or distribution of fraudulent documents used for identification purposes. The unit shall additionally specialize in fraudulent identification documents created and prepared for persons who are unlawfully residing within the state of Tennessee. The bureau shall employ sufficient employees to investigate and implement an FDI Unit.

SECTION 11.

(a) The Tennessee higher education commission may adopt a policy which allows a student to enroll in an institution within the University of Tennessee or Tennessee board of regents systems and allows a student to be eligible for resident tuition if the student:

(1) Graduated from a public or private high school in this state; and

(2) Resided in this state with a parent or legal guardian while attending classes at a public or private high school in this state for at least two (2) years prior to graduation.

(b) To be eligible for the provisions of subsection (a) of this section, an eligible student shall:

(1) Satisfy admission standards as determined by the Tennessee higher education commission for the appropriate type of institution and have secured admission to, and enrolled in, an institution within University of Tennessee or Tennessee board of regents systems; and

(2) If the student cannot present to the institution valid documentation of United States nationality or an immigration status permitting study at a postsecondary institution:

(A) Provide to the institution a copy of a true and correct application or petition pending filed with the United States Citizenship and Immigration Services to legalize the student's immigration status, or

(B) File an affidavit with the institution stating that the student will file an application to legalize his or her immigration status at the earliest opportunity the student is eligible to do so, but in no case later than:

(i) One (1) year after the date on which the student enrolls for study at the institution, or

(ii) If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the United States Citizenship and Immigration Services provide such a formal process, and

(C) If the student files an affidavit pursuant to subdivision (B) of this section, present to the institution a copy of a true and correct application or petition filed with the United States Citizenship and Immigration Services no later than:

(i) One (1) year after the date on which the student enrolls for study at the institution, or

(ii) If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the United States Citizenship and Immigration Services provide such a formal process, which copy shall be maintained in the institution's records for that student.

(c) Any student who completes the required criteria prescribed in subsections (a) and (b) of this section shall not be disqualified on the basis of the student's immigration status from any scholarships or financial aid provided by this state.

(d) The provisions of this section shall not impose any additional conditions to maintain resident tuition status at a postsecondary educational institution within the University of Tennessee or Tennessee board of regents systems on a student who was enrolled in a degree program and first received such resident tuition status at that institution during the 2008-2009 school year or any prior year.

SECTION 12. This act shall take effect November 1, 2008, the public welfare requiring it.